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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/518,557	12/22/2004	Richard Smith	231/1/140	6781
170 7590 06/24/2008 RICHARD M. GOLDBERG 25 EAST SALEM STREET SUITE 419 HACKENSACK, NJ 07601			EXAMINER BECKER, DREW E	
			ART UNIT 1794	PAPER NUMBER
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/518,557

Applicant(s)

SMITH, RICHARD

Examiner

Drew E. Becker

Art Unit

1794

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 07 January 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 3-6, 8, 10-13, 15-18, 20 and 21 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 3-6, 8, 10-13, 15-18, 20 and 21 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date 1/7/08
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Double Patenting

1. Applicant is advised that should claim 15 be found allowable, claim 20 will be objected to under 37 CFR 1.75 as being a substantial duplicate thereof. When two claims in an application are duplicates or else are so close in content that they both cover the same thing, despite a slight difference in wording, it is proper after allowing one claim to object to the other as being a substantial duplicate of the allowed claim. See MPEP § 706.03(k).

Claim Rejections - 35 USC § 112

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claims 3-6, 8, 10-13, 15, 17-18, and 20-21 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.
4. Claims 8, 17-18, and 21 recite the "region of discontinuity being in the form of at least one of cuts, slots and perforations". It is not clear whether a single elongated cut would satisfy this limitation or not.
5. Claims 3 and 10 recite "a single shaped cut". This appears to contradict parent claims 21 and 8, as described above.

Claim Rejections - 35 USC § 102

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6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

7. Claims 3-5 and 21 are rejected under 35 U.S.C. 102(a) as being anticipated by DE 19954899.

DE 19954899 teaches a packaging container comprising a wall (Figure 4, #5), a gas outlet opening for venting gas from within the container (Figure 3), a label with perforations (Figure 2, #3), an adhesive layer (Figure 1, #2), a sealant layer (Figure 1, #4), a single shaped cut (Figure 2, #3), and at least two converging cuts forming a flap member (Figure 4, #3).

Claim Rejections - 35 USC § 103

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

9. Claims 8, 10-12, 15, and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over DE 19954899 in view of Isakson et al [Pat. No. 4,640,838].

DE 19954899 teaches a pressure relief valve comprising a label layer with perforations (Figure 2, #3), an adhesive layer (Figure 1, #2), a sealant layer (Figure 1, #4), a single shaped cut (Figure 2, #3), and at least two converging cuts forming a flap member

(Figure 4, #3). DE 19954899 does not recite a backing layer with a release material. Isakson et al teach a pressure relief valve comprising a backing layer inherently comprising a release material (Figure 1, #12) and a label layer with an adhesive layer (Figure 1, #14 & 16). It would have been obvious to one of ordinary skill in the art to incorporate the backing layer of Isakson et al into the invention of DE 19954899 since both are directed to pressure relief valves, since DE 19954899 already included an adhesive layer and label layer, and since the backing layer of Isakson et al would have provided a convenient and efficient means for storing and applying the label of DE 19954899. Phrases such as "for a packaging container..." are merely preferred methods of using the claimed pressure relief valve.

10. Claim 13 is rejected under 35 U.S.C. 103(a) as being unpatentable over DE 19954899, in view of Isakson et al, as applied above, and further in view of GB 2315256A.

DE 19954899 and Isakson et al teach the above mentioned components. DE 19954899 and Isakson et al do not recite a fold, score, or crease that acts as a hinge. GB 2315256A teaches a label comprising with peripheral perforations on three sides and a tab (Figure 3, #22 & 24) for lifting up the label to form a hinge on the right side. It would have been obvious to one of ordinary skill in the art to incorporate the hinge of GB 2315256A into the invention of DE 19954899, in view of Isakson et al, since all are directed to labels, since DE 19954899 already included a flap defined by perforations (Figure 4), since GB 2315256A teaches that labels commonly included hinges, and

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since a hinge for DE 19954899 would have provided a more uniform and defined flap member.

11. Claims 3-5, 17-18, and 21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Mizuno [Pat. No. 5,989,608] in view of DE 19954899.

Mizuno teaches a packaged product and method comprising a container with a cover (Figure 7, #32 & 34), an aperture (Figure 7, #36), a member with a flap covering the aperture (Figure 9B, #50 & 52b), a label with an adhesive (Figure 9A, #50 & 54), and a region of discontinuity defining the edge of the flap (Figure 9B, #52b). Mizuno does not recite perforations defining the flap. DE 19954899 teaches a pressure relief valve comprising a label layer with perforations (Figure 2, #3), an adhesive layer (Figure 1, #2), a sealant layer (Figure 1, #4), a single shaped cut (Figure 2, #3), and at least two converging cuts forming a flap member (Figure 4, #3). It would have been obvious to one of ordinary skill in the art to incorporate the perforations of DE 19954899 into the invention of Mizuno since both are directed to vented containers, since Mizuno already included a pressure relief valve with a flap (Figure 9B, #52b) but simply did not describe the region of discontinuity, and since DE 19954899 teaches that pressure relief valves with flaps commonly used perforations to define the flap (Figure 4, #3).

12. Claim 6 is rejected under 35 U.S.C. 103(a) as being unpatentable over DE 19954899 in view GB 2315256A.

DE 19954899 teaches the above mentioned components. DE 19954899 does not recite a fold, score, or crease that acts as a hinge. GB 2315256A teaches a label comprising with peripheral perforations on three sides and a tab (Figure 3, #22 & 24) for lifting up

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the label to form a hinge on the right side. It would have been obvious to one of ordinary skill in the art to incorporate the hinge of GB 2315256A into the invention of DE 19954899 since both are directed to labels, since DE 19954899 already included a flap defined by perforations (Figure 4), since GB 2315256A teaches that labels commonly included hinges, and since a hinge for DE 19954899 would have provided a more uniform and defined flap member.

13. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Bemiss et al [Pat. No. 3,716,180], Jacques [Pat. No. 5,114,766], Haamer [Pat. No. 7,051,762], Leong [Pat. No. 4,530,440], Clougherty et al [Pat. No. 6,662,827], Barthels et al [Pat. No. 4,134,535], McGonigle [Pat. No. 4,574,174], and Emslander et al [Pat. No. 4,708,249] teach containers and pressure relief valves.

Response to Arguments

14. Applicant's arguments with respect to claims 3-6, 8, 10-13, 15, 17-18, and 20-21 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

15. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Drew E. Becker whose telephone number is 571-272-1396. The examiner can normally be reached on Mon.-Fri. 8am to 4:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on 571-272-1398. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Drew E Becker/
Primary Examiner, Art Unit 1794